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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRANDON BUCKLEY,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

Case No. EDCV 15-0147-KES

MEMORANDUM OPINION AND  
ORDER

Plaintiff Brandon Buckley (“Plaintiff”) appeals the final decision of the Administrative Law Judge (“ALJ”) determining that his disability ended under section 1614(a)(3)(A) of the Social Security Act. For the reasons stated below, the Commissioner’s decision is AFFIRMED.

**I.**

**BACKGROUND**

Plaintiff was born on July 9, 1983. Administrative Record (“AR”) 291. At age 8, he was diagnosed with giant cell astrocytoma, a form of brain tumor. Id. He underwent two surgeries in 1992 and 1993 to remove the tumor. Id.

1 An MRI scan performed in May 2013 shows an area of encephalomalacia (*i.e.*,  
2 loss of brain tissue) in Plaintiff's right, frontal lobe corresponding with the  
3 location where the surgery was performed. AR 602-603.

4 Plaintiff was first found disabled as of April 1, 1992, based on meeting  
5 listing 12.02 for "organic mental disorders." AR 11, 13. In 1998 and 2002,  
6 Plaintiff's condition was re-evaluated and his disability found to be continuing.  
7 AR 11. In 2012-2013, however, when his condition was re-evaluated, he was  
8 determined to be "not disabled" since January 1, 2012. AR 11-22 (ALJ's  
9 decision dated 9/27/13).

10 The ALJ determined that Plaintiff's condition had improved, such that  
11 he no longer meets listing 12.02. AR 13. The ALJ then determined that  
12 Plaintiff nevertheless has the following "severe" impairments: (1) right frontal  
13 giant cell astrocytoma, status post-surgery, (2) seizure disorder, (3) history of  
14 attention deficit and hyperactivity disorder, (4) depression, and (5) lumbar disc  
15 disease. AR 13.

16 The ALJ determined that with these impairments, Plaintiff has the  
17 residual functional capacity ("RFC") to perform light work. AR 15. The ALJ  
18 also included the following non-exertional limits in her RFC:

19 He can sustain concentration and attention, persistence and  
20 pace in two-hour blocks of time; interact and respond  
21 appropriately with coworkers and supervisors, but requires a  
22 causal, non-intense work environment with the general  
23 public; and perform simple, routine, and repetitive tasks.  
24 Lastly, the claimant must be redirected or reminded of his  
25 task one time per workday and be off-task five percent of the  
workday due to distractions from psychologically based  
symptoms.

26 AR 15.

27 With this RFC, the vocational expert ("VE") testified that Plaintiff could  
28 work as a packer, sales attendant or housekeeper. AR 21. Based on the VE's

1 testimony, the ALJ concluded that Plaintiff was “capable of making a  
2 successful adjustment to work” and found Plaintiff “not disabled.” AR 22.

## 3 II.

### 4 ISSUES PRESENTED

5 Plaintiff’s appeal presents the following two issues: (1) whether the ALJ  
6 appropriately discredited the opinions of a doctor at Riverside County Mental  
7 Health (at AR 559) alleged to be a treating physician; and (2) whether the ALJ  
8 appropriately discredited the testimony and letters submitted by Plaintiff’s  
9 family and friends (at AR 61-69 [mother’s hearing testimony] and AR 263-289  
10 [letters]). See Joint Stipulation (“JS”) Dkt. 19 at 3.<sup>1</sup>

11 In essence, the parties dispute whether Plaintiff’s brain injury limits his  
12 non-exertional functionality in ways greater than those accommodated by the  
13 RFC. In deciding this appeal, the Court’ role is not to reweigh the evidence,  
14 but only to consider whether the ALJ committed legal error in weighing the  
15 evidence. Quintanilla v. Colvin, 2015 U.S. Dist. LEXIS 157368, \*11-12 (C.D.  
16 Cal. Nov. 19, 2015) (“It is the ALJ’s responsibility to determine credibility and  
17 resolve conflicts or ambiguities in the evidence. If the ALJ’s findings are  
18 supported by substantial evidence, [then] this Court may not engage in second-  
19 guessing.”).

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27 <sup>1</sup> All page citations to the JS cite to the CM/ECF pagination.  
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III.

DISCUSSION

A. Issue One

1. **The opinions of the unidentified doctor from Riverside County Mental Health should be treated as those of an examining physician, not a treating physician.**

Plaintiff first contends that the doctor who signed the 1-page form at AR 559 was a “treating physician.” JS at 3.

In social security disability proceedings, the opinions of treating physicians are entitled to special deference. 20 C.F.R. §§ 404.1527; 404.1527(d)(2). The rationale for this rule is that a treating physician “is employed to cure and has a greater opportunity to know and observe the patient as an individual.” Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). To obtain this deferential treatment, it is Plaintiff’s burden to furnish evidence that his relationship with any particular medical provider was a treating relationship. 42 U.S.C. § 423(d)(5)(A) (“An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require.”).

Here, the 1-page form indicates that Plaintiff was seen by Riverside County Mental Health “since 7/2/2012 and was last seen 3/18/2013.” AR 559. There is a blank for a “doctor signature” which is signed illegibly and dated “4/26/13.” The fact that a doctor signed this form more than one month *after* the date identified as Plaintiff’s last visit to receive treatment suggests that Plaintiff did not receive treatment from the signing doctor in April 2013 when he/she provided the opinions at issue. There are no treatment notes in the record from Riverside County Mental Health. There are no records describing what treatment Plaintiff received at Riverside County

1 Mental Health, which doctors he saw or how frequently he visited. Notably,  
 2 in Plaintiff's briefing on this issue, Plaintiff never provides this doctor's name  
 3 or refers to his/her gender – suggesting that Plaintiff does not know this  
 4 doctor's name or his/her gender. JS at 3-7.

5 The Court finds it inappropriate to accord the “special deference” due a  
 6 treating physician to the opinions of a doctor whose name and gender are  
 7 apparently unknown to Plaintiff. Accordingly, the Court analyzes the ALJ's  
 8 treatment of the opinions at AR 559 under the rules applicable to examining  
 9 physicians. An “examining physician's opinion may be rejected only for  
 10 specific and legitimate reasons supported by substantial evidence in the  
 11 record.” Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995).

12 **2. Riverside County Mental Health opined Plaintiff could not**  
 13 **work a forty-hour week without decompensating.**

14 The form indicates a diagnosis of “mood disorder due to brain injury  
 15 from giant cell astrocytoma.” AR 559. As for Plaintiff's mental functioning,  
 16 the signing doctor circled: “THOUGHT concrete, MEMORY intact,  
 17 JUDGMENT mildly impaired” with evidence of “depression, anxiety,  
 18 compulsive behavior and decreased energy.” Id. The form notes that Plaintiff  
 19 is taking anti-depressants “with reasonable response.” Id. The form also notes  
 20 that Plaintiff can “maintain a sustained level of concentration” and “interact  
 21 appropriately with others” who are family, co-workers or supervisors, but not  
 22 strangers. Id. The form indicates that Plaintiff cannot “sustain repetitive tasks  
 23 for an extended period” or “adapt to new or stressful situations.” Id. Plaintiff  
 24 can, however, manage his own funds and do “self care.” Id. When asked if  
 25 Plaintiff “can complete 40 hr. work week without decompensating?,” the  
 26 signing doctor circled “no.” Id.

27 Plaintiff contends that the ALJ discounted this last opinion concerning  
 28

1 decompensation<sup>2</sup> without providing a specific, legitimate reason and, therefore,  
 2 failed to place sufficient restrictions in the RFC to address it. JS at 3.

3 **3. The ALJ gave specific and legitimate reasons supported by**  
 4 **substantial evidence for discrediting the decompensation**  
 5 **opinion of Riverside County Mental Health.**

6 The ALJ gave three reasons, numbered in [brackets] below, for giving  
 7 “little weight” to the opinion of Riverside County Mental Health regarding  
 8 Plaintiff’s inability to work fulltime without decompensating:

9 [1] the opinion expressed is quite conclusory, providing very  
 10 little explanation of the evidence relied on in forming that  
 11 opinion. The provider failed to document positive objective  
 12 clinical findings to explain her opinion. [2] It also appears  
 13 she relied quite heavily on the subjective report of symptoms  
 14 and limitations provided by the claimant and seemed to  
 15 uncritically accept as true most, if not all, of what the  
 16 claimant reported. Yet, as explained elsewhere in this  
 17 decision, there exists good reasons for questioning the  
 18 reliability of the claimant’s subjective complaints. [3] This  
 19 opinion is also inconsistent with the claimant’s admitted  
 20 activities of daily living, which have already been described  
 21 above in this section.

22 AR 19. If any one of these three reasons is “specific and legitimate” and  
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24 <sup>2</sup> Episodes of “decompensation” are defined by Social Security  
 25 Regulations as “exacerbations or temporary increases in symptoms or signs  
 26 accompanied by a loss of adaptive functioning as manifested by difficulties in  
 27 performing activities of daily living, maintaining social relationships, or  
 28 maintaining concentration, persistence, or pace. Episodes of decompensation  
 may be demonstrated by an exacerbation in symptoms or signs that would  
 ordinarily require increased treatment or a less stressful situation (or a  
 combination of the two).” Moreno v. Astrue, 2009 U.S. Dist. LEXIS 61281,  
 2009 WL 2151855, at \*14 n.2 (S.D. Cal. July 17, 2009) (quoting 20 C.F.R.  
 § 404, subpt. P, app. 1).

1 “supported by substantial evidence in the record,” then the ALJ did not  
2 commit legal error in failing to account for Riverside County Mental Health’s  
3 decompensation opinion in formulating Plaintiff’s RFC.

4 a. The Riverside County Mental Health decompensation  
5 opinion is conclusory.

6 An ALJ need not accept any physician’s opinion which is “brief and  
7 conclusionary in form with little in the way of clinical findings to support [its]  
8 conclusion.” Young v. Heckler, 803 F.2d 963, 968 (9th Cir. 1986). Here, the  
9 ALJ found that this 1-page form (and, in particular, the disputed  
10 decompensation opinion) is “conclusory” and lacks documented “clinical  
11 findings” to explain how the doctor arrived at the opinion. This finding is  
12 supported by substantial evidence in the record.

13 As discussed above, there is nothing in the record indicating how long, if  
14 ever, the signing doctor had a treating relationship with Plaintiff, or even if the  
15 opinions circled on the form were based on the doctor’s review of records from  
16 Plaintiff’s prior visits versus his/her personal examination of Plaintiff. The  
17 form does not describe any testing performed at Riverside County Mental  
18 Health that would provide data from which to derive opinions about Plaintiff’s  
19 functional capabilities. There is no evidence, for example, that the signing  
20 doctor ever administered standardized tests or asked Plaintiff to complete a  
21 task requiring sustained concentration and observed the results.

22 Plaintiff points out that there are undisputed clinical findings, cited in  
23 this form, that Plaintiff has a brain injury. JS at 5. He argues that those  
24 findings are sufficient to support the opinions of Riverside County Mental  
25 Health. Id. This argument, however, begs the question. The disputed issue is  
26 not whether Plaintiff has a brain injury – it is whether Plaintiff’s brain injury  
27 means that he cannot complete a 40-hour workweek (even when allowed to be  
28 off-task five percent of the time in a non-intense environment) without



1 decompensating. The form provides no insight on why the unidentified doctor  
 2 at Riverside County Mental Health concluded that it does. Examining  
 3 psychiatrist Dr. Shirley Simmons concluded that it does not. AR 459. The  
 4 ALJ did not err in giving greater weight to Dr. Simmons's opinions, since Dr.  
 5 Simmons's opinions are based on her personal examination of Plaintiff and  
 6 actual "tests to determine whether claimant had a mental dysfunction." AR  
 7 18, citing AR 454.<sup>3</sup>

8 Plaintiff also argues that it is error to conclude that the 1-page Riverside  
 9 County Mental Health opinion lacks supporting clinical findings because other  
 10 reports prepared by other doctors found that Plaintiff had trouble with memory  
 11 and attention span. JS at 6. None of the other reports, however, opine that  
 12 Plaintiff cannot work a 40-hour week without decompensating or provide  
 13 support for that particular opinion. Rather, the cited report (at AR 299)  
 14 conflicts with the opinions circled at Riverside County Mental Health that  
 15 Plaintiff's memory is "intact" and Plaintiff can "maintain a sustained level of  
 16 concentration." Cf., AR 299 and 559.

17 b. The Riverside County Mental Health decompensation  
 18 opinion apparently relies on Plaintiff's subjective  
 19 complaints.

20 An ALJ can disregard medical opinions premised on the claimant's  
 21 subjective complaints where the ALJ has already properly discounted those  
 22 complaints. Fair v. Bowen, 885 F.2d 597, 605 (9th Cir. 1989).

23 Here, the ALJ's finding that the unidentified doctor at Riverside County

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24 <sup>3</sup> Dr. Simmons administered a (1) mental status examination, (2) Trails  
 25 A and Trails B, (3) Wechsler Adult Intelligence Scale III, (4) Wechsler  
 26 Memory Scale III and (5) Wide Range Achievement Test IV. AR 454.  
 27 Plaintiff's mother reported that Dr. Simmons examined Plaintiff for  
 28 approximately 45 minutes. AR 280.



1 Mental Health “relied quite heavily on the subjective report of symptoms and  
2 limitations” is supported by substantial evidence. There is no other basis  
3 provided in the report for the doctor’s reaching the conclusion that Plaintiff’s  
4 brain injury would cause the degree of functional limitations indicated. As  
5 discussed above, there is no evidence of a treating relationship or even an  
6 examination during which the signing doctor administered tests or observed  
7 Plaintiff’s abilities.

8 The ALJ considered Plaintiff’s subjective complaints concerning the  
9 severity of his limitations and discounted them for appropriate reasons,  
10 including inconsistency with his reported daily activities and his observed  
11 ability to concentrate during the hearing. AR 18-19. Specifically, the ALJ  
12 found that Plaintiff’s “inability to maintain a job may be due to many factors  
13 unrelated to his alleged impairments, including a possible lack of motivation to  
14 work.” AR 18. On appeal, the ALJ’s credibility determination concerning  
15 Plaintiff was not challenged.

16 c. The Riverside County Mental Health decompensation  
17 opinion is inconsistent with Plaintiff’s daily activities.

18 Inconsistency between a physician’s opinion of a claimant’s abilities and  
19 the claimant’s daily activities suffices as a specific and legitimate reason to  
20 discount the physician’s opinion if supported by substantial evidence. Morgan,  
21 169 F.3d at 600-02; Lindquist v. Colvin, 588 Fed. App’x 544, 546 (9th Cir.  
22 2014) (“The ALJ reasonably found that examining physician Dr. Schneider’s  
23 conclusion that Lindquist would not be able to maintain attendance or focus in  
24 the workplace was inconsistent with Lindquist’s daily activities ...”).

25 Here, the ALJ found that Plaintiff engages in a “somewhat normal level  
26 of daily activity and interaction.” AR 18. The ALJ specifically noted that  
27 Plaintiff engages in the following daily activities:

28 The claimant admitted activities of daily living, including

1 dressing and bathing independently, performing household  
2 chores, preparing meals, shopping for groceries, reading,  
3 using his computer and watching television.

4 AR 18. The ALJ also noted that Plaintiff “was involved in a diving accident in  
5 July of 2007” on a trip to Las Vegas. AR 17, citing AR 430-433.

6 With regard to chores, Plaintiff testified that he washes dishes, takes out  
7 the trash and mows the lawn. AR 49. The ALJ noted the testimony of  
8 Plaintiff’s mother that he often fails to complete his chores in a satisfactory  
9 manner, but found that this could be due to “possible lack of motivation to do  
10 his chores.” AR 19. With regard to preparing meals, Plaintiff testified he had  
11 “no problems” fixing sandwiches, cereal or microwaving food. AR 48.

12 Plaintiff testified he goes grocery shopping with his mother four or five times  
13 each month. AR 49-50. Plaintiff testified that he purchases and reads two or  
14 three books every month (AR 50-51), uses email and Facebook and plays  
15 computer solitaire (AR 51) and watches two or three hours of television each  
16 day. AR 52. He has no difficulty bathing and dressing. AR 48-49. When  
17 asked if he could work in a warehouse moving packages from one area to  
18 another, he responded, “I could probably do that.” AR 55.

19 Plaintiff’s mother, with whom he lives, described his daily activities as  
20 getting something to drink and eat for breakfast, watching TV, reading,  
21 walking “most every day to the local store to get something to drink or snack  
22 on,” talking to friends, listening to music, using the computer and having  
23 dinner with her. AR 223. He feeds the cat and performs personal grooming,  
24 albeit with reminders. AR 224-225. He can use the microwave, vacuum, dust,  
25 do laundry and mow the lawn. AR 225. He goes to church and family get-  
26 togethers “almost every weekend.” AR 227. When asked for how long  
27 Plaintiff can pay attention, his mother responded, “That is not a cut and dry  
28 answer. It depends on what he is paying attention to.” AR 228.

1 As the ALJ noted, many of the “physical and mental abilities and social  
2 interactions required to perform these activities are the same as those necessary  
3 for obtaining and maintaining employment.” AR 18; see also Morgan, 169  
4 F.3d at 600 (“Contrary to Morgan’s claims of disability, the ALJ determined  
5 that Morgan’s ability to fix meals, do laundry, work in the yard, and  
6 occasionally care for his friend’s child served as evidence of Morgan’s ability to  
7 work.”). Plaintiff’s ability to complete his daily activities, without  
8 decompensating, is thus inconsistent with the opinions of Riverside County  
9 Mental Health.

10 While the record is replete with anecdotes of Plaintiff not finishing some  
11 task at hand, the record contains no evidence that the effort or stress of trying  
12 to perform any particular task ever caused Plaintiff to decompensate, *i.e.*, to  
13 become temporarily unable to perform his daily activities or socialize. Rather,  
14 the anecdotes consistently report that Plaintiff would stop working mid-task  
15 and start doing something else that he preferred, which the ALJ found could  
16 indicate lack of motivation rather than disability. AR 19. Thus, the ALJ did  
17 not error in finding that Plaintiff’s daily activities, as reported by Plaintiff and  
18 others, are inconsistent with the decompensation opinion of Riverside County  
19 Mental Health.

20 **B. Issue Two**

21 **1. To discount the testimony of non-medical sources, the ALJ must**  
22 **give a germane reason relevant to each witness.**

23 Only acceptable medical sources may provide medical opinions. 20  
24 C.F.R. § 416.927(a)(2) (“Medical opinions are statements from physicians and  
25 psychologists or other acceptable medical sources that reflect judgments about  
26 the nature and severity of your impairment(s), including your symptoms,  
27 diagnosis and prognosis, what you can still do despite impairment(s), and your  
28 physical or mental restrictions.”). Non-medical sources, however, such as

1 relatives, neighbors and clergy, may provide information concerning the  
 2 severity of a claimant's symptoms and their effects on observable activities. 20  
 3 C.F.R. § 404.1513(d)(4). When an ALJ discounts the testimony of such lay  
 4 witnesses, "he [or she] must give reasons that are germane to each witness."  
 5 Valentine v. Comm'r SSA, 574 F.3d 685, 694 (9th Cir. 2009). "It is entirely  
 6 permissible for the ALJ to rely on the same rationale for rejecting the  
 7 testimony of more than one witness so long as such rationale is relevant to  
 8 both witnesses." Payton v. Comm'r of Soc. Sec., 2010 U.S. Dist. LEXIS  
 9 103880 (E.D. Cal. Sept. 27, 2010).

10 **2. Non-medical sources testified that Plaintiff has difficulty**  
 11 **completing tasks and remembering conversations.**

12 The record contains testimony from the following non-medical sources,  
 13 some of which report their personal observations of Plaintiff's behavior, and  
 14 some of which go further by offering medical opinions concerning the reasons  
 15 for Plaintiff's behavior:

16 • Letter from Helen Cox, Plaintiff's ex-mother-in-law (AR 263): Ms.  
 17 Cox describes how when asked to do a home maintenance chore, like painting  
 18 a step, Plaintiff "begins the job with enthusiasm, but quickly becomes  
 19 distracted and then frustrated by his inability to stay on task." Ms. Cox also  
 20 describes the results of Plaintiff's employment in 2004 in a hospital  
 21 maintenance department. When given a task, he would start it, but then  
 22 "wander off" until he was let go.

23 • Letter from Heather Weber, Plaintiff's ex-girlfriend (AR 263): Ms.  
 24 Weber reports that Plaintiff "cannot concentrate on any one thing for longer  
 25 than 10-15 minutes."

26 • Letter from George Price, Plaintiff's family friend (AR 264): Mr. Price  
 27 hired Plaintiff to do yard work, but found he was "unable to complete the job."  
 28 He attributes Plaintiff's unsatisfactory work to trouble remembering

1 instructions. He also cites Plaintiff's tendency to repeat the same stories as  
2 evidence of memory problems.

3 • Letter from Jesse Lee Neugart, Plaintiff's high school friend (AR 268-  
4 269): Mr. Neugart reports that Plaintiff struggled while enrolled in special  
5 education classes and will repeat the same stories "4-5 times a day."

6 • Letter from Kathleen Jernigan, Plaintiff's cousin and neighbor (AR  
7 274): Ms. Jernigan reports that Plaintiff "tells the same stories over and over"  
8 and forgets where the glasses and beverages are located at her house, despite  
9 visiting three or four times each week.

10 • Letter from Mehgan Jernigan, Plaintiff's cousin (AR 276): Ms.  
11 Jernigan reports that Plaintiff "repeats stories over and over again" and cannot  
12 remember to take out the trash when asked. He also becomes frustrated by his  
13 inability to play video games or sports.

14 • Letter from Hal Geant, Plaintiff's pastor (AR 277): When Plaintiff  
15 tried to help out around the church, Pastor Geant observed "he can only do a  
16 task 5-10 minutes and he wonders off."

17 • Letter from Christine Buckley, Plaintiff's mother (AR 278-289),  
18 questionnaire (AR 223-230) and testimony (AR 61-69): Ms. Buckley describes  
19 Plaintiff being hired to stock shelves at a liquor store owned by a family friend.  
20 After 8 days, he was let go because "he just could not keep up." AR 284. He  
21 "tried college at RCC completely plugged into the disabled program ... and  
22 still failed 2 times." AR 284. When he does household chores like dishes or  
23 yard work, "they are not done right or not finished and left incomplete." AR  
24 285. In the middle of a task, "he'll just get up and walk away. That's what  
25 he's done at everything that he's tried to work at." AR 63.

26 **3. The ALJ properly disregarded medical opinion testimony**  
27 **offered by lay witnesses.**

28 With regard to all of the non-medical sources listed above, the ALJ

1 found as follows:

2 [W]ith regard to the various statements made by the  
3 claimant's mother, friends, family, acquaintances, neighbors  
4 and friends, the undersigned notes that while a layperson  
5 can offer an opinions on a diagnosis, the severity of the  
6 claimant's symptoms, or the side effects of medications in  
7 relationship to the claimant's ability to work, the opinion of  
8 a layperson is far less persuasive on these some issues than  
9 are the opinions of medical professionals as relied on herein.  
10 Since these third parties are not medically trained to make  
11 exacting observations as to dates, frequencies, types and  
12 degrees of medical signs and symptoms, or of the frequency  
13 or intensity of unusual moods or mannerisms, the accuracy  
14 of the statements concerning the claimant's limitations is  
questionable. Most important, their statements are not  
supported by the clinical or diagnostic medical evidence that  
is discussed above. The undersigned finds the statements of  
these individuals are not credible to the extent their  
statements are inconsistent with the determination herein.

15 AR 16-17. Plaintiff characterizes this as an improper "blanket rejection" of  
16 their testimony simply because they are not doctors. JS at 13-14.

17 By finding these witnesses "not credible" only to the extent their  
18 statements are "inconsistent with the determination herein," the ALJ was not  
19 necessarily discrediting their observations of Plaintiff's behavior (*e.g.*, that he  
20 wanders off rather than completing tasks). Instead, the ALJ discredited their  
21 opinions that *the reason why* Plaintiff fails to complete chores is because his  
22 brain injury makes him incapable of completing chores. When they attributed  
23 Plaintiff's behavior to Plaintiff's brain injury, these lay witnesses were offering  
24 medical opinions. The ALJ need not provide any reason other than the lack of  
25 medical qualifications to reject the medical opinions of lay witnesses. 20  
26 C.F.R. § 416.927(a)(2).

27 To the extent these witnesses offered non-medical opinions that Plaintiff  
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1 cannot work, the ALJ did give a germane reason for rejecting all of them; such  
2 opinions are inconsistent with medical evidence. Bayliss v. Barnhart, 427 F.3d  
3 1211, 1218 (9th Cir. 20015) (“[i]nconsistency with the medical evidence” is a  
4 germane reason for discrediting the testimony of a lay witness); Lewis v. Apfel,  
5 236 F.3d 503, 511 (9th Cir. 2001) (“One reason for which an ALJ may  
6 discount lay testimony is that it conflicts with medical evidence.”).

7       The ALJ’s finding of inconsistency is supported by substantial evidence.  
8 For example, Dr. Simmons’s examination indicated fair short- and long-term  
9 memory and age-appropriate concentration and attention; there was no  
10 evidence that Plaintiff continued to receive regular, ongoing treatment for his  
11 childhood brain tumor; and, although he received treatment for his seizure  
12 disorder and depression, that treatment was essentially routine and  
13 conservative in nature. AR 14, 18, 218-33, 262-89, 291-303, 311-451, 456-459.  
14 This medical evidence suggested that while Plaintiff may have mild or  
15 moderate limitations in the areas of memory and attention, such limitations  
16 could be accommodated by restrictions in the RFC (*e.g.*, limiting Plaintiff to  
17 work that only requires sustained concentration for two-hour blocks of time  
18 and allows him to be off-task five percent of the time). AR 15.

19       Ultimately, after weighing the conflicting evidence, the ALJ determined  
20 that the reason for Plaintiff’s behavior, as observed and reported by the non-  
21 medical witnesses, is lack of motivation to work rather than his brain injury.  
22 AR 18-19. While a different fact finder may have weighed the evidence  
23 differently and reasonably reached a different conclusion, the ALJ did not  
24 commit legal error in the process of weighing the evidence.

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1 IV.

2 CONCLUSION

3 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be  
4 entered **AFFIRMING** the decision of the Commissioner denying benefits.

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6 Dated: December 04, 2015

7 *Karen E. Scott*

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9 KAREN E. SCOTT  
10 United States Magistrate Judge  
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